



**Empire State
Development**

REQUEST FOR PROPOSALS Buffalo, New York



North Aud Block Redevelopment

Parcel A1

Issued: May 11, 2022

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – ii).

Designated Contacts for this Procurement:

- Primary Contact: RALPH VOLCY
- Secondary Contact: JOHN DISCOLO

All contacts/inquiries shall be made by email to the following address:

Canalside.North.Aud@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

Submission Deadline: September 1, 2022 by 8:00 PM EST

EXECUTIVE SUMMARY

Background. The Erie Canal Harbor Development Corporation is issuing a Request for Proposals for the redevelopment of a single parcel on the North Aud Block, a key site in the growing revitalization of downtown Buffalo, New York. The parcel is located along the canal system at Main Street in the heart of the Canalside Project, and south of the Interstate 190.

At full build-out, the Canalside Project is expected to consist of over 1 million square feet of commercial (retail, lodging, and office), cultural, and residential space along the Buffalo waterfront that will be designed to emphasize downtown Buffalo's connection to the Lake Erie waterfront. It will do so through the construction of a network of interpretive water elements evoking the character and vibrancy of the historic canals that once crossed the area, including segments of the Erie Canal, the Commercial Slip, and the Main & Hamburg Canal. The Project provides various year-round offerings and experiences, including restaurants, entertainment venues, retail outlets, cultural attractions, vast public spaces, and increased access to the Buffalo River, appealing to a wide demographic of visitors and residents. Development of the northern portion of this Aud Block parcel is integral to the overall Project, connecting Canalside to the established business district.

Site Details.

Address: Currently 130 Main Street, Buffalo, NY

Parcel A1 Area: 2.0± acre

Zoning: Per the Canalside Design Guidelines

Utilities: All major services available along the neighboring streets.
New electric transformer dedicated to this development will be required.
Work with the Buffalo Sewer Authority on appropriate sanitary connection.

Proposals. This RFP permits a variety of proposed land uses, though Proposals are required to include certain mandatory design features such as multiple building design, sub-grade parking, reservation of space for ground floor (towpath and street levels) retail, development of public rights-of-way, creation of public corridors, canal lighting, and providing a mixed-use development plan that further enhances the Canalside area into a vibrant, urban neighborhood. ECHDC is prepared to provide the Developer with \$10.0 million for capital construction costs related to the historic rights-of-way, public corridors, and canal lighting. A pre-proposal meeting/site visit will be held at the Canalside Pavilion at 1:00 pm on Wednesday, May 25, 2022. Any questions or clarifications should be submitted by 2:00pm on June 9, 2022. To the project mailbox: Canalside.North.Aud@esd.ny.gov.

Submission Requirements. Respondents are required to submit all required documents electronically to Canalside.North.Aud@esd.ny.gov on or before 3:00 pm Local Time, on September 1, 2022 and must include all items specified in this RFP. Proposals submitted after the deadline will not be considered.

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I. INTRODUCTION

The mission of Empire State Development (“ESD”) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

II. OVERVIEW

Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), is seeking proposals from experienced real estate developers for the purchase and redevelopment of one parcel located at 130 Main Street in the Canalside area of downtown Buffalo, New York. Each party that submits a response (“Proposal”) to this Request for Proposal (“RFP”) is referred to herein as a “Respondent,” and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Developer.”

The Site is a primarily vacant parcel, formerly part of a superblock that once contained the War Memorial Auditorium, a former professional sports venue that was demolished in 2009. The overall Site is bounded on the north by Lower Terrace/Interstate 190; Pearl and Commercial Streets to the west; on the east by Main Street; and by the recreated Erie Canal to the south. (See **Figure 1.1**). In December 2021, The Erie Canal Harbor Development Corporation board adopted a Modified General Project Plan (“MGPP”) which described the development plan for the North Aud Block Redevelopment Project (the “Project”) as being divided into a multiple building development based on the historic street grid, including a structured ramp that would be constructed both below and above grade.

In accordance with the MGPP and community input, ECHDC now seeks to proceed with the redevelopment of the remaining parcel on the Site. Respondents are encouraged to propose, and must fully describe, a redevelopment plan for parcel A1 on the North Aud Block Project that includes certain mandatory design features, as described further in Section 3 of this RFP.

Due to the required provision of space for such features, ECHDC is prepared to provide the Developer with \$10.0 million for capital construction costs related to the historic rights-of-way, public corridors and canal lighting.

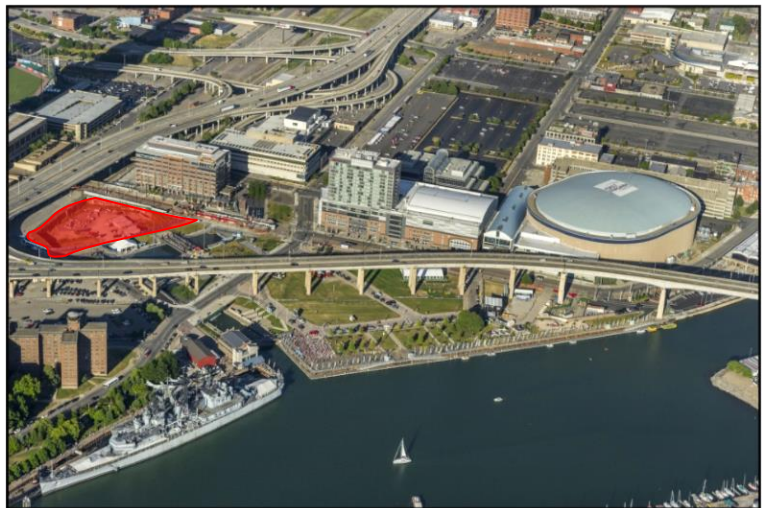


Figure 1.1

View of Canalside area with Project Site shown in RED

Respondents to this RFP may propose any mix of uses that will advance the Development Goals and meet all Development Requirements described in Sections 2 and 3 below. Proposals should provide for the redevelopment of the entire Site under a full site purchase from ECHDC.

Erie Canal Harbor Development Corporation

ECHDC, a subsidiary of ESD, was created in 2005 to spearhead the City's waterfront redevelopment efforts with a mission to revitalize Western New York's waterfront and restore economic growth to Buffalo based on the region's legacy of pride, urban significance and natural beauty. ECHDC is currently in Phase 3 of redeveloping Buffalo's Inner Harbor. Phase 3 is focused on the build-out of Canalside, a 21-acre mixed-use, urban entertainment district located at the foot of Main Street and along the Buffalo River.

Canalside

The Canalside project area is bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets (see **Figure 1.2**). This area enjoys a number of benefits, including an efficient roadway network that supports regional and international access; convenient access to the NYS Thruway and NFTA's Metro Rail system; and proximity to a host of local and regional natural, historic, and cultural amenities, as well as world-class architecture, attractions, and entertainment venues.

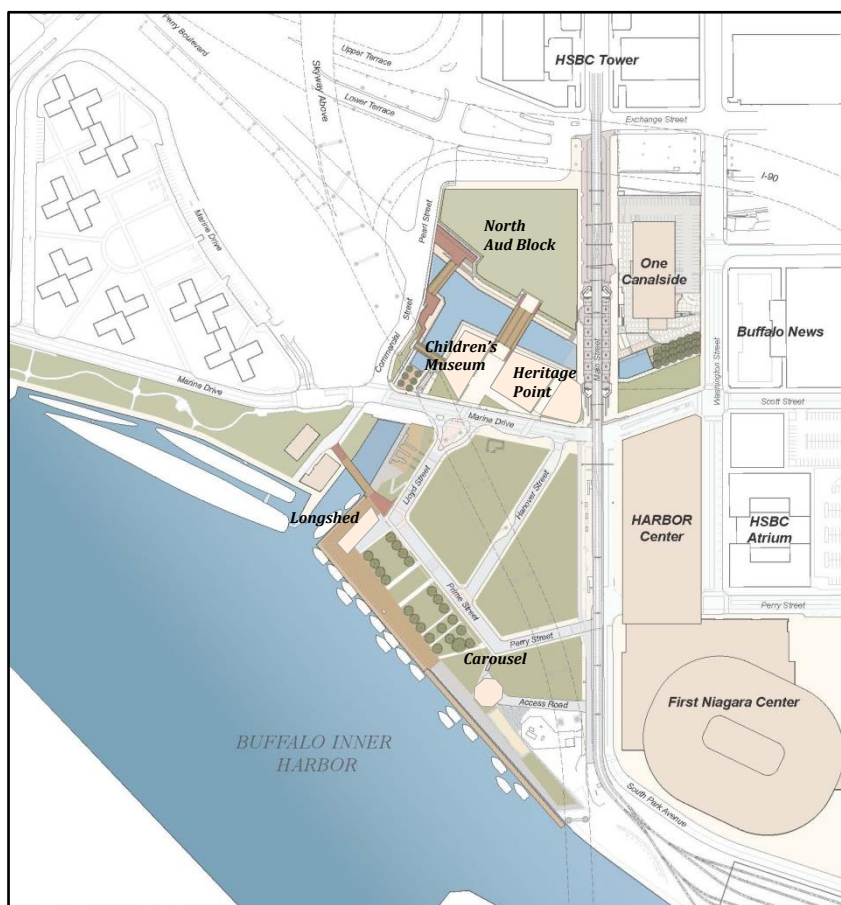


Figure 1.2
Plan View of Canalside Area

Canalside annually hosts an array of appealing activities integrating arts and cultural experiences with recreational activities, programming, waterside opportunities and special events capitalizing on the diversified resources in the Western New York region.

At full build-out, the Canalside Project is expected to consist of over one million square feet of commercial (retail, lodging, and office), cultural, and residential space along the Buffalo waterfront that will be designed to emphasize downtown's connection to Lake Erie through the

construction of a network of interpretive water elements evoking the character and vibrancy of the historic canals that once crossed the area, including segments of the Erie Canal, the Commercial Slip, and the Main & Hamburg Canal. The current Canalside Project is described in the Modified General Project Plan (“MGPP”) adopted by the ESD Board of Directors in 2022. A copy of the MGPP can be found at <https://esd.ny.gov/erie-canal-harbor-development-corporation-projects>

Canalside is typically described by its four main development areas; the Historic Blocks, Donovan Block, Webster Block and Aud Block.

In addition to the development occurring at Canalside, several other significant projects are underway or recently completed in the immediate area, including the \$20 million reconstruction of Main Street to allow two-way vehicular traffic to share the roadway with the light rail system and \$120 million redevelopment of the One Seneca Tower including M&T Bank Tech Hub. The new \$28 million downtown train station opened in 2020 while a \$40 million Casino expansion opened in 2017 just a few blocks away. Other planned developments include a new waterfront Metro Rail Station at the foot of Main Street, redevelopment of the DL&W Railroad Terminal, and a \$42 million new residential building and parking ramp within the Skyway Loop ramp just one block northwest of Canalside.

Historic Blocks

The Historic Blocks and Erie Canal Harbor Archeological District were opened in 2008 and established Canalside as the City’s burgeoning waterfront district. With an emphasis on the history of the site, the Central Wharf, Commercial Slip, Whipple Truss, and Coit-McCutcheon Building (home of the Buffalo and Erie County Naval & Military Park) have become part of the Buffalo lexicon. These elements, along with The Great Lawn, have hosted hundreds of events and welcome over 1,500,000 visitors annually.

The Historic Blocks are also home to the Queen City Bike Ferry, a seasonal, pedestrian/bicycle ferry service with over 55,000 riders annually; the Spirit of Buffalo, a schooner providing sailing excursion opportunities; as well as Buffalo Harbor Kayak and Buffalo Water Bikes, providing human-powered, waterborne options.



Figure 1.3

View of Ruins, Commercial Slip and Naval Museum in Historic Blocks

This area also contains the Liberty Hound and Clinton’s Dish restaurants, providing sit-down casual and outdoor takeaway options, respectively.

Donovan Block

The former Donovan Block was acquired by ECHDC in 2007. The parcel, including an existing eight-story structure, was then sold by ECHDC in 2011 to Harbor District Associates, LLC and Benderson Development, LLC for redevelopment into One Canalside. This \$30 million private redevelopment project is fully leased with over 150,000 GSF of hotel (105-room Marriott Courtyard), restaurant (Pizza Plant), and office space (Philips-Lytle).

In addition to the development at the north end of the block, ECHDC completed the East Canal project, a \$5 million public space referencing the former Main & Hamburg Canal that once crossed the site.

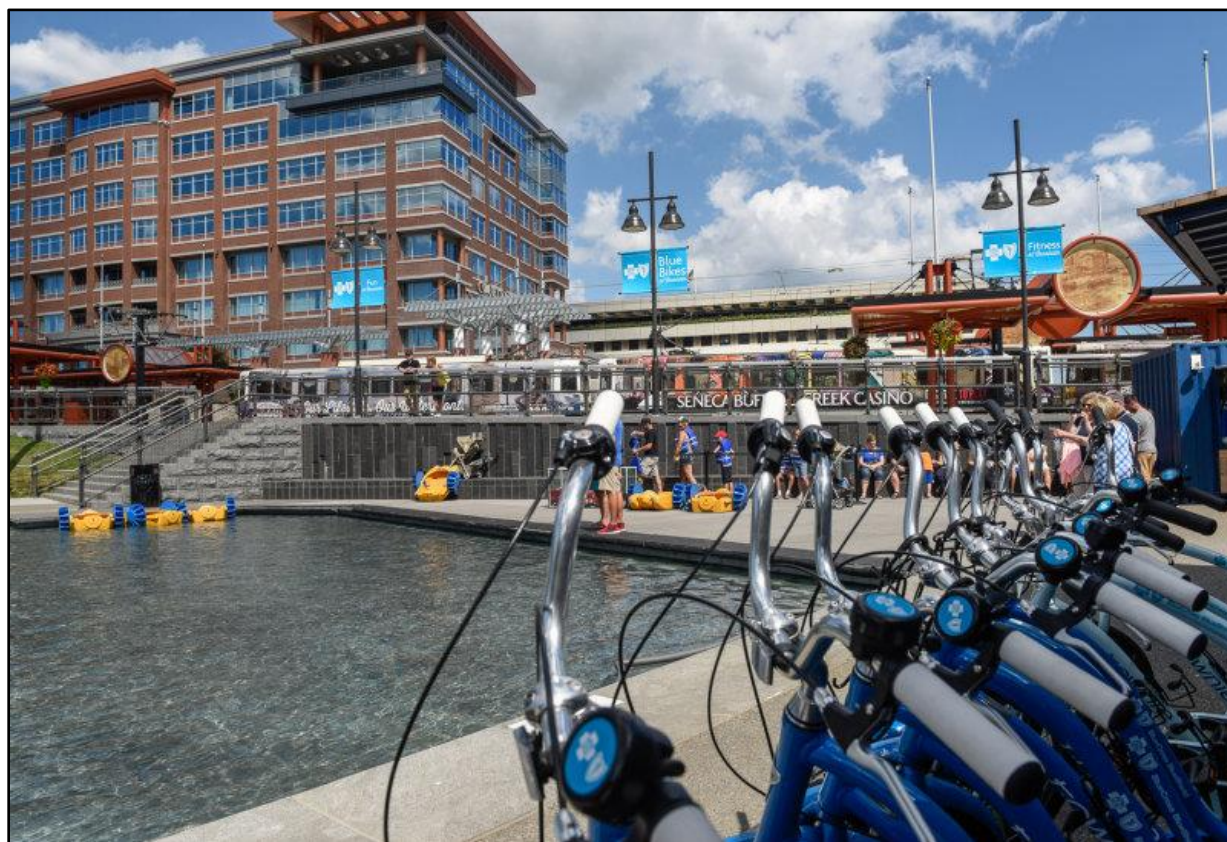


Figure 1.4

View of One Canalside from Main Canal (RFP Site to the right foreground)

Ground will be broken for the southern portion of the Donovan Block once Main Street is reconstructed (estimated 2023). It is anticipated that this private development will include ground floor retail/restaurant and office/residential/hotel on the upper five stories. Underground private parking is contemplated at this time.

Webster Block

Building off of ECHDC's success at Canalside, in 2012 the City of Buffalo issued an RFP for the Webster Block parcel, which sits in the Canalside footprint. The City of Buffalo awarded the project to the Buffalo Sabres National Hockey League team/HARBORCenter LLC.

In April 2013, ground was broken on HARBORCenter, a \$202 million mixed-use development that includes two hockey rinks, a world-class hockey training facility, a full-service Marriott hotel, and four-level structured parking garage, as well as retail and signature restaurant space. HARBORCenter includes a signature Tim Horton's Coffee & Bake Shop, Southern Tier Brewing Company restaurant and bar, and small-scale retail shops on the ground floor. The 850-space parking garage, hockey rinks, and training facility are also open.



Figure 1.5
View of HARBORCenter with RFP Site in the foreground

Aud Block

The former Memorial Auditorium Block (“Aud Block”) was acquired by the ECHDC in 2008 and since that time, ECHDC has invested public funds remediating hazardous waste, lead and asbestos containing materials, completing demolition of the Memorial Auditorium, relocating utilities and preparing the site for future development. Refer to **Appendix D** for environmental reports and related information. As described earlier in the RFP, the Aud Block has been divided into multiple parcels reflecting the 19th century streets/building typology of the site (see **Figure 1.6**).

The “Canals and Public Environments”, or public space on the Aud Block, was designed as an interpretive landscape of water features and site amenities that will help visitors understand the history and character of the former canal district and its significance to the City, New York State and the nation. The “Canals and Public Environments” represents an additional multi-million dollar public investment into the Aud Block and prepares it for private development both south and north.

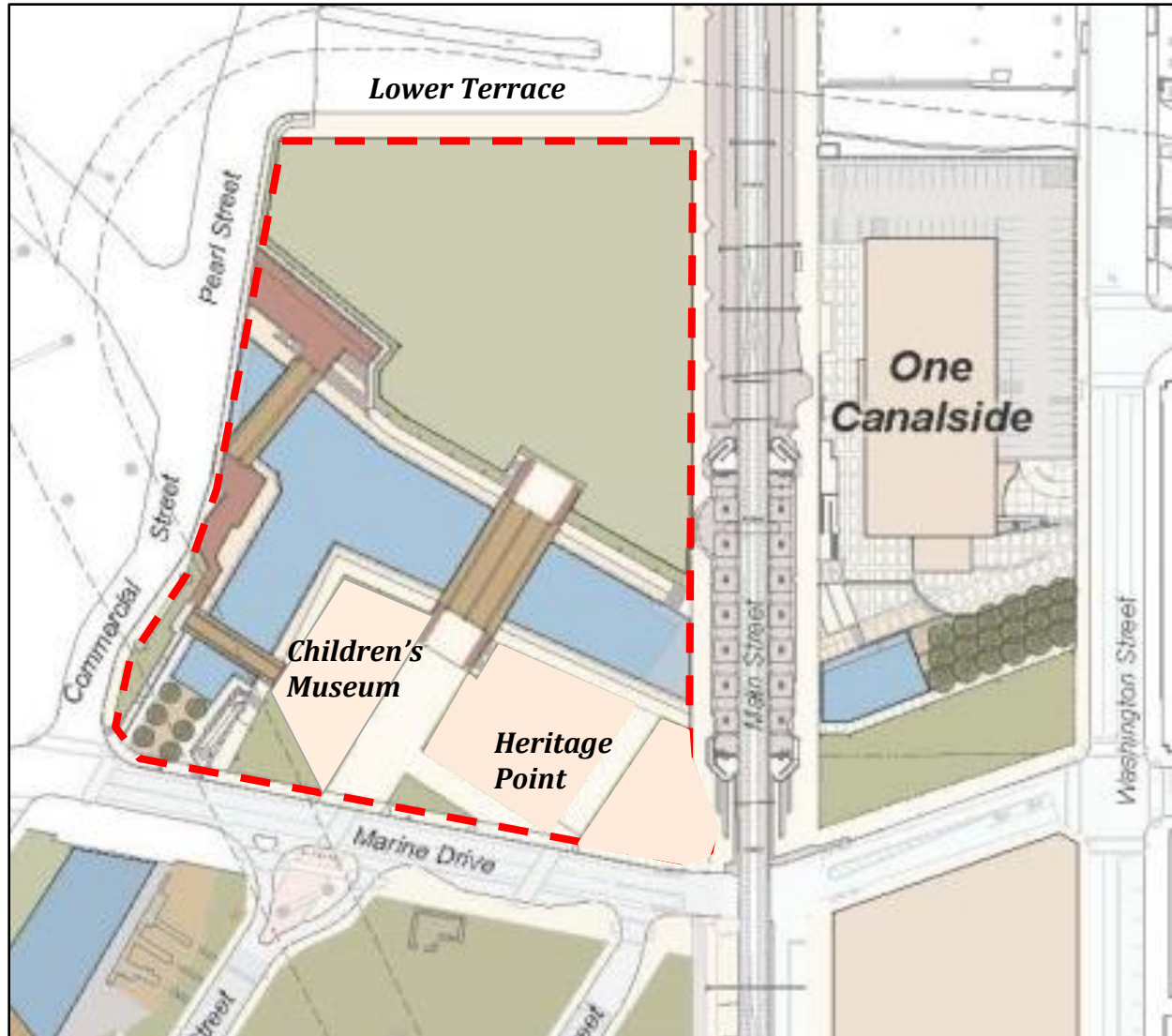


Figure 1.6
Aud Block shown in RED

Explore & More...a Children's Museum

The Cultural Master Plan for Canalside identified short-term and long-term opportunities for cultural attractions, entertainment, waterside and special events programming which maximize use of the indoor and outdoor public spaces, increases the likelihood of commercial investment, and would attract additional visitors to Canalside. In the Summer of 2019, The Explore & More Children's Museum opened to the public. The 40,000 square foot museum with a 2,6000 square foot roof terrace is located

along the main canal, open 5 days a week for families and their children. The museum reaches a peak monthly attendance of 19,900 and has exceeded 200,000 annual attendance. (see **Figure 1.7**)



Figure 1.7
View of Children's Museum

Heritage Point

The 2018 MGPP recognized a new public/private development scenario for the proposed South Aud Block redevelopment projects. In 2021, Sinatra & Company Real Estate broke ground on Heritage Point, a 104,000 GSF two-building development on the remaining portion of the “South Aud Block”. This private development has a combined 0.49-acre footprint and consists of towpath/street level restaurants and shops, office space and 64 residential units on the upper four floors. The ECHDC contributed funding to the sitework capital improvements, including the Prime Slip, Lloyd Street and Canal Street, which are now considered part of Parcel A3 and remain publicly accessible. Heritage Point is expected to open in 2023.



Figure 1.8
South Aud Block Development Rendering

Canalside Visitor Center

Currently a Visitor Center is being developed by ECHDC for the southwest corner of the North Aud Block Site. This building will provide public amenities to the site as well as ADA access from street level to the towpath level.

North Aud Block Parcel

Now that the canals, the surrounding public spaces are in place, the Children's Museum is completed and Heritage Point is under construction, ECHDC is focusing its efforts on the undeveloped area north of the canals. This "North Aud Block Redevelopment" Project is bounded on the south by the new canals, on the east by Main Street, on the west by Commercial/Pearl Street and the north by Lower Terrace (See **Figure 1.8**). The site is one parcel (A1). See **Appendix C** for a delineation of the parcels being offered in the RFP.

The "North Aud Block", a nearly 2-acre vacant parcel would include retail, restaurants, office space, residential units, hotel uses and structured parking within several buildings that acknowledge portions of the 19th century street grid while allowing for the site to blend into the current 21st century surroundings and infrastructure. The assumed development plan for Parcel A1 includes nearly 425,000 GSF in several buildings with an estimated 200 residential units, commercial and retail spaces, office/operations space for ECHDC, and up to 450 parking spaces located in a structured ramp that would be constructed both below and above grade.

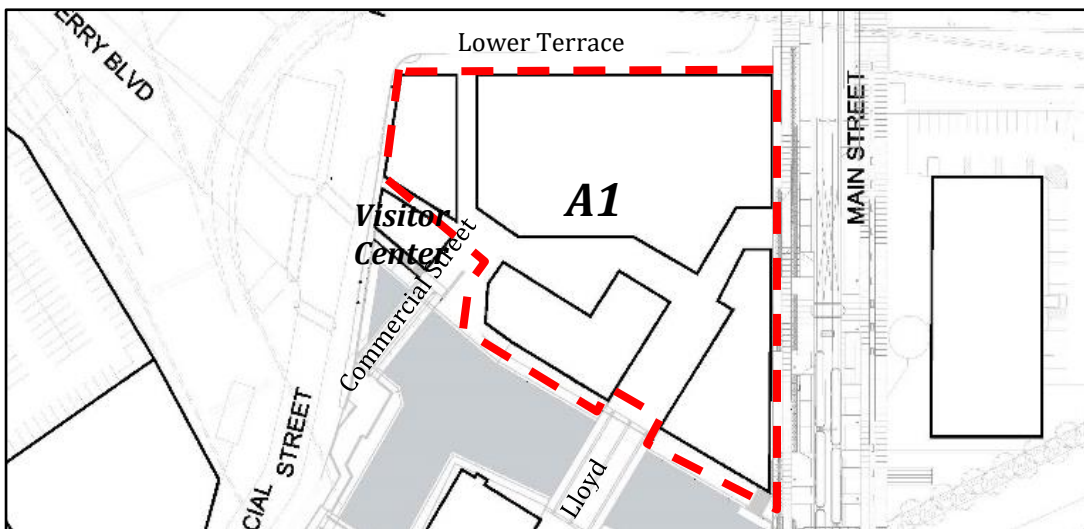


Figure 1.9
North Aud Block Parcel A1 shown

The multiple building development should be set within reconstructed historic street pattern, allowing for Lloyd Street and Commercial Street to continue through the site. Public access to the site shall continue across the bridge, from Main Street, Pearl Street and Lower Terrace. The reconstructed streets will be pedestrian only and emergency vehicle access at select locations. Emergency vehicle access and service to the entire North Aud Block site should be reviewed between the designated developer and City of Buffalo Fire Department. Vehicle access to the sub terrain parking structure should be along Lower Terrace.

Lighting of the canal from the building exterior along the towpath is also required.

Given the scale of these buildings and some set within away from the streets edge, a shared, underground refuse collection area within the parking garage should be considered.

It is expected that the reconstructed pedestrian streets, heated sidewalks, parking structure, and canal lighting noted above will be completed by the Designated Developer, as approved by the Erie Canal Harbor Development Corporation. Ten million dollars (\$10.0 million) will be provided by ECHDC for the capital construction of these required features.

In accordance with the Canalside Design Guidelines (refer to Section 1.3 of this RFP), the remaining North Aud Block parcel (A1) would be built to the lot lines and within the height limits for this site.

The overall success of the area will be based on how well each building works with others and the public realm. ECHDC encourages a mixed-use plan that increases and diversifies neighborhood offerings, attractions, and opportunities while not having a negative impact on other area of the City. The ECHDC has a preference for locally-owned and operated retail and restaurants as opposed to national chain or franchised operations.

Site Context & Advantages

Ownership and Taxes

Fee title/ownership of the Site rest with ECHDC. ECHDC is currently working on a land parcel transfer with the City of Buffalo to clean up the site perimeter along Commercial/Pearl Street. The property is currently exempt from property taxes.

Under a purchase and private redevelopment of the Site, property taxes would be assessed by the City of Buffalo Department of Finance.

Key Location

The Site is well positioned within downtown Buffalo, just south of the central business district along the foot of Main Street. The potential development has an opportunity to capitalize on the numerous access routes and close proximity to the coastlines of the Buffalo River and Lake Erie. As well as capitalizing on visitors attending sporting events and Canalside attractions. The Site is within walking distance from neighbors that include residential apartments, two Marriott hotels, the First Niagara Center (NHL Hockey) and HARBORCenter, the Central Wharf and Erie Basin Marina, and Coca Cola Field (AAA Baseball). The Site is also within walking distance/ferry ride of Buffalo's Outer Harbor, and access to hundreds of acres of open space and miles of waterfront trails.

Within Canalside District

The Site is within the ECHDC Canalside Project area, and thus it benefits from various ECHDC investments and activities including the completed rehabilitation of the former Donovan Building into One Canalside project with its Courtyard Marriott; the East Canal, additional public space

consisting of canals and towpaths; the HARBORCenter project with its twin ice rinks, Marriott hotel, Southern Tier Brewing restaurant, and structured parking; Cultural attractions such as the Explore & More Children's museum, the Longshed, and Buffalo Heritage Carousel; and main public canals and public spaces adjacent to the parcels.

Transportation

The Site is located on Main Street and is served by several forms of public transportation, including a transit stop of the Light Rail Rapid Transit and several bus routes. The Site is one block from an entrance to the I-190 Thruway as well as NY Route 5. The Site is also the start of the Erie Canalway Trail and along the Erie County Shoreline Trail, both major recreational bicycle trails. The Site is within walking distance of the Queen City Bike Ferry, operating seasonally between the Inner and Outer Harbor.

Environmental Review

In addition to the physical improvements and surrounding development projects, ECHDC has completed an environmental review for the Canalside project under the New York State Environmental and Quality Review Act ("SEQRA") and has exercised ESD's power to override local zoning. While the City of Buffalo's zoning restrictions do not apply to the project, construction and rehabilitation in the project area is governed by Canalside Design Guidelines adopted in accordance with the Project's Modified Project Proposal (MGPP). The Canalside Design Guidelines can be found in **Appendix B**, while the most recent MGPP can be found at <https://esd.ny.gov/erie-canal-harbor-development-corporation-projects>. In addition, designs with glass and metal as sheathing are discouraged. Recessed, vertically proportioned windows with clear or low E glass are encouraged.

Utilities

The Site is serviced by public water and sewer, as well as privately-owned electric, gas, telephone and cable. The designated developer will need to work with the public and private utility companies and agencies, including the Buffalo Sewer Authority and National Grid.

Historic Street and Towpaths

The pedestrian streets formed between the multiple building development are to reference the historic Lloyd and Commercial Street orientation and align with the pedestrian bridges. The streets should utilize historic materials such as cobbles and framed by heated concrete sidewalks. The historic immigrant stair is to remain as pedestrian access from the at grade level to the towpath.

The towpaths are designated public space. ECHDC will entertain a lease arrangement for up to a 10-ft. width of the towpath, measured from the face of the building outward that would allow the Designated Developer the right to use this space for outdoor restaurant seating or retail appurtenances. An 8-ft. wide clear path along the towpath must be maintained at all times and all seating and barriers must be removed at close of business hours. It is expected this lease would include provisions for the creation of balconies, canopies, and/or exterior lighting and signage.

ECHDC will entertain a lease arrangement for the sidewalk areas that would allow the Designated Developer the right to use this space for outdoor restaurant seating or retail appurtenances. It is expected this lease would include air rights for the provision of balconies, canopies, and/or exterior lighting and signage.

Market Context for New Development

The Canalside district is just south of the City of Buffalo's Central Business district and within walking distance of a number of major employers, including M&T Bank (8,000 employees in downtown Buffalo; 1,000 tech employees in nearby Seneca One Tower), and Seneca Buffalo Creek Casino (nearly 1,000 employees, approximately 3 million visitors yearly). In the past decade plus, downtown has seen considerable growth in business development, hotels, restaurants, and attractions.

The residential market in and around downtown is in continuous growth. A variety new of apartment developments have been scattered across the City with a few located near Canalside. To the northwest, a nine-story building within the Skyway loop at 61 Terrace will include 148 apartments and five-story parking garage for 300 cars. At Seneca One Tower, the development includes 115 apartments besides office space and technology hub for M&T Bank. Besides new projects, the Buffalo Municipal Housing Authority has recently began working with a consultant team to examine possible transformations for their 616 unit house development at Marine Drive.

The cultural amenities continue to increase at Canalside as well. Along the boardwalk, a building titled the Longshed was completed and is currently occupied but the Buffalo Maritime Center. The BMC is constructing a 70-foot replica packet boat from the Erie Canal era that will be launched during the canal's bicentennial celebration in 2025. Also along the boardwalk, a historic 1924 carousel was located at the southern end within wood timber structure. The Buffalo and Erie County Naval & Military Park continues to expand their exhibits and amenities to sustain their yearly attendance.

The site is adjacent to a NFTA Metrorail that accesses districts north of the Central Business area such as the Theater District, Medical campus, and extending to the University at Buffalo south campus.

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to Canalside.North.Aud@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

DEVELOPMENT GOALS

ECHDC invites Respondents to submit Proposals that maximize the benefits to the State of New York and City of Buffalo economies, improve the quality of life for its citizens, provide strong public

spaces, and increase the long-term sustainability of Canalside through the community-supported redevelopment of the Site.

ECHDC is seeking Proposals that are responsive to, but are not limited to, the following development priorities:

1. Aligning with the goals of the Canalside Modified General Project Plan;
2. Meeting Project requirements outlined in Section 3;
3. Providing a mixed-use facility that enhances the Canalside neighborhood offerings;
4. Maximizing ground floor (towpath and street levels) activation with a mix of national and local retail and restaurants;
5. Encouraging residential units with balconies on upper floors or accessible roof decks;
6. Maximizing economic impact;
7. Maximizing visitor and pedestrian traffic at Canalside;
8. Maximizing Common Area Maintenance (CAM) charges towards ensuring long-term sustainability of Canalside;
9. Minimizing the project contribution required by ECHDC;
10. Featuring meaningful participation of New York State-certified Minority and Woman-Owned Business Enterprises (MWBs) in the Project Team;
11. Incorporating sustainable building practices and LEED Silver Core & Shell;
12. Recognizing the principles outlined in “A Public Statement of Principles for High Road Development of Buffalo’s Waterfront” attached as **Appendix H**;

1. DEVELOPMENT REQUIREMENTS AND COMMITMENTS

Required Development by Designated Developer

While there are no prohibitions on the inclusion of specific uses, Proposals are required to include certain mandatory design features such as the reservation space for ground floor (towpath and street levels) retail, development sites reflecting the historic streets, canal lighting, and to provide a mixed-use development plan that further enhances the Canalside neighborhood.

Ground Floor Retail

The towpaths and streets, are both designated circulation and public space. In order for Canalside to be successful, active first floor uses are necessary throughout the area. Given the location and “four front sides” to these parcels, attention to layout and detail will be critical to provide multiple, strong retail opportunities along the towpath and streets while addressing loading, access to upper floors and refuse. The Proposal will include a Ground Floor Retail plan.

Historic Street

The Proposal will include the extension of historic Commercial Street, and Lloyd Street from the bridge landings on the north side of the Main Canal. The streets and heated

sidewalks shall be finished in materials matching the stone streets completed by the City of Buffalo in 2010 (i.e., Lloyd, Hanover and Prime). The streets are intended for pedestrian traffic only, but are expected to handle occasional valet service, deliveries, maintenance vehicles and/or emergency vehicles, as determined by the Developer.

Canal Lighting

The Proposal will include the lighting of the Main Canal from the exterior of the new buildings along the towpath (south side). The lighting shall match the color, temperature and quality of the exterior lighting included on the Children's Museum for the same purpose.

Mixed-Use Development Plan

The overall success of the Canalside area will be based on the success of each individual project. ECHDC encourages a mixed-use plan that increases and diversifies neighborhood offerings, attractions, and opportunities while not having a negative impact on other area of the City. The Proposal will highlight the mixed-uses of the planned development and provide commitment letters for the ground floor retail space as indicated above. The Development shall include a parking garage that is partially below-grade and incorporated into one of the development buildings. The parking garage is not to be a stand-alone structure.

Development Commitments by ECHDC

Due to the required provision to develop the public rights-of-way and canal lighting, as described in Section 1.242 and Section 3.1, ECHDC is prepared to bear certain capital construction costs.

ECHDC has committed funding for the construction of Lloyd Street, Commercial Street, public alleyways and/or public square, and canal lighting. The funds are tied to meeting the Requirements in Section 3.1. Assuming these requirements are met to the satisfaction of ECHDC, the Corporation shall provide up to \$10.0 million to be used for the purpose of capital costs associated with these public rights-of-ways and canal lighting.

Transaction Structure and Certain Costs

ECHDC will entertain a variety of transaction structures that may include, but not be limited to:

- All-cash sale of the Site

Under a **sale**, it is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site.

The determination of whether ECHDC will elect to dispose of the Site by sale will depend on the offers received and ECHDC's assessment of the best interests of the State. Although ECHDC is requesting Proposals for sale, ECHDC reserves the right to request revised proposals that reflect a lease of the land only, or a sale or lease of all or a portion of the improvements, or a combination thereof. ECHDC reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in Section 5. Any such Respondents still under consideration will be expected to be given the opportunity to revise their Proposals and any related provisions of the RFP will be amended or deemed amended as necessary.

Under any transaction structure, the towpath area along the buildings are considered public space. The towpath area will not be sold but a portion of it may be leased (including air rights) from ECHDC in order to activate this space. The landings for both Commercial Street bridge and Lloyd Street bridge at the North Aud Block will remain public property within their current configuration. (Approximately 32-feet from the bridge structures.)

ECHDC will entertain Proposals that request ECHDC or ESD to finance a portion or all of a Respondent's required ground lease payments during the construction period. Other long-term financing by ECHDC may also be available. If a Proposal is made contingent on receiving financing from ECHDC, the Respondent should include proposed terms for such financing in their Proposal.

Respondents are encouraged to browse ESD incentive programs at: <http://esd.ny.gov/BusinessPrograms.html>.

As noted below in this RFP's Section 7 Disposition Process, in order to implement the Project and transfer the Site, ECHDC, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) the State Environmental Quality Review Act and its implementing regulations ("SEQRA"); (ii) the State Historic Preservation Act; (iii) the State's Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) the New York State Urban Development Corporation Act (the "UDC Act"). Such compliance must be completed before disposition of the Site to the Designated Developer for the Project. Please also note that Section 7 of this RFP requires that the Designated Developer enter into agreements with ECHDC and the State that will require the Designated Developer to pay, commencing from the date of its conditional designation:

1. Under a purchase, a 10% security deposit against the purchase price; or
2. In the event the purchase price is below market value, the Designated Developer and ECHDC shall negotiate a security deposit based on a percentage of the development value; and
3. ECHDC's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of ECHDC's consultants and legal counsel.

PROPOSAL REQUIREMENTS

The following are the requirements for all proposal submissions. ECHDC reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ECHDC also reserves the right, in its sole discretion, to reject any and all proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party) without completing this RFP process.

In evaluating the capabilities of the Respondent, ECHDC may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ECHDC

further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents. The initial Proposals should be no longer than 100 pages of text.

Respondent's financial offer for the Site should assume that it will be transferred in "AS IS" and "WHERE IS" condition. Each complete Proposal must contain the following elements:

1. Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Section 4, Paragraph 8 Procurement Forms and Requirements.

Each Proposal must include a description of the Respondent owner (under a sale) or the development team, including:

- The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation, the security deposit.
- Evidence of Designated Developer's commitment to pay the full purchase price for the Site (including 10% at designation and balance at closing).
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

2. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s) and building program.
- Type, bulk and size of each component of the development program (gross

and net square footages).

- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Goals set forth in Section 2 of this RFP.
- The description should address how the Proposal will advance the Development Goals set forth in Section 2 above.
- The description should address how the Proposal will meet the requirements of Section 3 above.
- The description must include the estimated construction budget.

3. Financial Offer Terms

Respondents are encouraged to submit offers to purchase the Site, expressed in a fixed dollar amount, which may be a nominal, to be paid at closing. Under this scenario, transfer of title will be by quit-claim deed (without any representations or warranties) at the closing. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan.

The minimum Common Area Maintenance (CAM) charge required for any proposal is \$1.15 per gross square foot of space regardless of the ownership structure proposed. CAM charges are required in addition to any other taxes, special assessments or other charges applicable to the property. ECHDC will consider CAM payments conditioned on actual occupied/leased space. However, CAM payments may not be conditional with regard to the first 50% of space in the building.

ECHDC will entertain a lease arrangement for up to a 10-ft. width of the towpath and Prime Slip, measured from the face of the building outward, and the sidewalk areas adjacent the proposed streets that would allow the Designated Developer the right to use this space for outdoor restaurant seating or retail appurtenances while maintaining a clear path of 8-ft. It is expected this lease would include air rights for the provision of balconies, canopies, and/or exterior lighting and signage.

An exception in terms of contingencies is that Respondents should note any assumptions with respect to the contingency of capital funding to be contributed by ECHDC towards the costs of the development.

4. Site Plan and Architectural Design

Each entity submitting a Proposal must provide the following:

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of drawings on 11" x 17" paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.

- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.
- A description of the proposed project's adherence (or not) to the Canalside Design Guidelines.

5. Development Timeframe

Respondent must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified.

6. Team Member Qualifications

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, architect, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team, particularly mixed-use, urban development projects (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner or tenant entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

7. Project Information Supplement ("RFP Workbook")

Respondents are required to include a completed RFP Workbook on portable USB drive for this solicitation and send to: Canalside.North.Aud@esd.ny.gov. Subject line should include "RFP Workbook for North Aud Block RFP by [insert Developer's Name]".

Instructions for completing the RFP Workbook are included in the Excel file that has been posted with this RFP as **Appendix F**. In addition to emailing a copy of the RFP Workbook, Respondents should submit two USB drives containing a completed RFP Workbook.

Among other items, completing the RFP Workbook requires Respondents to enter and submit information on the following subjects:

- a) *Key General Assumptions*: Sustainability; Public Benefits; Canalside Goals; Project requirements; Project Timeline; Design Guideline Overrides (if applicable); Economic Benefits; M/WBE and SDVOB Participation; NYS Vendor Participation; Project Contingencies; and Endorsements.
- b) *Key Financial Assumptions*: Development and Leasing Summary; Estimated Development Cost and Rents by Use; Financing Summary; and Stabilization Information.
- c) *Development Budget*: Acquisition; Site Work; Construction; Soft Costs; Construction Finance; Permanent Finance; Reserves; Marketing and Other.
- d) *Development Timeline*: Projected Expenditures and Square Footage of Development by Phase.
- e) *Sources of Funds*: Debt Attraction Calculation; Proposed Permanent Financing.
- f) *Pro Forma*: Cash flows for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should include all necessary capital investments over time and reserves and debt service payments associated with the financings. Respondents are required to complete all Pro Forma worksheets in the format provided by the RFP Workbook. If Respondents wish, however, they may also complete a supplementary, fully optional Pro Forma as identified on the tab “Pro Forma (Hardcode)” in order to highlight any discrepancies between the existing format constraints and a more precisely modeled Project.

In completing the RFP Workbook, with respect to financial information, Proposals should address the following:

- Pro forma cash flows in live-linked Excel format for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax exemptions, other tax exemptions and energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to at least thirty (30) years of operations and include all necessary capital investments over time and reserves and debt service payments associated with the financings.
- Construction/renovation sources, budget, and uses of funds, including details of equity and financing sources and a break-out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction/renovation costs in the budget or contingences.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.

IV. SCHEDULE OF DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	May 11, 2022
Pre Proposal Site Meeting	May 25, 2022 at 1pm; Canalside Tent
Deadline for Submission of Questions	June 9, 2022 by 8:00 PM EST
Deadline for ESD to Respond to Questions	June 16, 2022
Submission of Proposals (date and time)	September 1, 2022 by 8:00 PM EST
Interviews (if necessary)	January 2023
Announcement of Successful Bidder	April 2023

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

V. SELECTION CRITERIA

In reviewing and evaluating proposals and preparing recommendations for the ECHDC Board of Directors, ECHDC staff will consider such criteria (all criteria considered by ECHDC being referred to collectively as the “Selection Criteria”) that, in ECHDC’s sole and absolute discretion, are in the best interests of ECHDC and the State. The criteria listed below are of significant concern:

- 1) Extent that the proposed Project advances the objectives outlined in the RFP. (15 points)
- 2) Extent that the proposed Project is consistent with Canalside Modified General Project Plan, and Canalside Design Guidelines. (10 points)
- 3) Extent that the proposed Project yields the highest level of public benefits (e.g., private taxable investment, new jobs/opportunities, highest return on the land, external benefits to the City’s setting [e.g., expansion of retail choices/offerings, extension of visitor stay, quality of life improvements], etc.) with the least amount of public investment. (15 points)
- 4) The overall proposed quality of the development plan, design, proposed timetables, and the extent that the proposed Project complements and enhances local community development/tourism objectives and existing/planned development projects. (15 points)
- 5) Extent that the proposed Project Team demonstrates a proven track record in successfully completing similar urban redevelopment efforts. (15 points)
- 6) The quality of the overall financial plan and impact of the proposal, including (15 points):
 - a) The use of reasonable and attributable assumptions;
 - b) The level of proposed private investment;
 - c) The level of demonstrated financial capacity to realize the proposed Project, documented through sources such as, but limited to expressions of interest from lenders, letters of credit, and/or performance bonding capacity; and

- d) Projected long-term economic benefits to the local community (e.g., property/sales/bed tax revenues, job creation, etc.).
- 7) Firms will be evaluated on their Diversity Practices, as evaluated on the attached Diversity Practices Questionnaire. (10 points)
- 8) Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller's Office and ESD policies on procuring Responsible Vendors, specifically in the following four major categories: (5 points)
- Financial and Organizational Capacity to Undertake the Project: Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
 - Legal Authority to do Business in New York State: Demonstrated by a foreign corporation's registration with the New York State Department of State under the Business Corporation Law or Not-for-profit Corporation Law (Note that both foreign and domestic businesses and not-for-profit corporations, limited partnerships, limited liability partnerships, and limited liability companies must all file documentation with the Department of State for such authority) and absence of any findings removing/preventing such authority.
 - Integrity: Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by federal, state or local governments, or prior determinations of integrity-related non-responsibility.
 - Previous Contract or Project Performance: Factors to be considered may include reports of less than satisfactory performance, early contract/project termination for cause, contract/project abandonment, court determinations of breach of contract, etc.

Developer Interviews

Following ranking of proposals, a number of developer teams (to be determined by the Selection Committee) may be asked to present their proposals to the Selection Committee.

After the interview process, the developers will receive a final ranking. ECHDC will negotiate exclusively with the first ranked developer (i.e., the "Preferred Developer"). If during the negotiation, the Selection Committee concludes that it is unlikely an agreement will be finalized with the Preferred Developer, the Selection Committee will be at liberty to enter into negotiations with the second-ranked respondent and so forth until it enters into an acceptable agreement to undertake the Project or stop the process.

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that

do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Respondent Description
- C. Project Description
- D. Financial Offer Terms
- E. Site Plan and Architectural Design
- F. Development Timeframe
- G. Team Member Qualifications
- H. Diversity Practices

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

B. Respondent Description

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

- The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.

- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation, the security deposit.
- Evidence of Designated Developer's commitment to pay the full purchase price for the Site (including 10% at designation and balance at closing).
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

C. Project Description

- The proposed use(s) and building program.
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Goals set forth in Section 2 of this RFP.
- The description should address how the Proposal will advance the Development Goals set forth in Section 2 above.
- The description should address how the Proposal will meet the requirements of Section 3 above.
- The description must include the estimated construction budget.

D. Financial Offer Terms

E. Site Plan and Architectural Plan

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of drawings on 11" x 17" paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.
- A description of the proposed project's adherence (or not) to the Canalside Design Guidelines.

F. Development Timeline

G. Team Member Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

H. Diversity Practices

ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- v. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- vi. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- viii. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. All Proposals must be received by 8:00 PM EST on Thursday, September 1, 2022. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hard copies) will not be accepted. When submitting each proposal, Respondents must comply with the following:

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email Canalside.North.Aud@esd.ny.gov.

2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email Canalside.North.Aud@esd.ny.gov. It is essential that the instructions in Appendix L - Administrative Proposal Check List are followed when submitting the different forms.

Late proposals will not be considered for award.

VII. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to Canalside.North.Aud@esd.ny.gov. Questions will not be accepted orally and any question received after the deadline will not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VIII. GENERAL CONDITIONS

Neither the State, ECHDC nor ESD make any representations or warranties whatsoever with respect to this RFP, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this RFP or otherwise furnished to respondents; the use or development, or potential use or development, of the Project or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for the adjacent properties; the absence or presence of hazardous substances or toxic materials in, under or upon the Project and the adjacent properties; compliance with environmental laws; tax assessments that may be made by the City, tax rates that may be established by the City and/or the amount of PILOT payable; and the suitability of the Project for any specific uses or development.

Each respondent shall make its own analysis and evaluation of the Project Site, including, without limiting the foregoing: the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for all adjacent lands; the absence or presence of hazardous substances or toxic materials in, under, or upon the Project Site and adjacent lands; compliance with environmental laws; and the suitability of the Project Site for any use or development. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Project, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESD, ECHDC and its advisors; land and improvements constituting the Project Site and adjacent to the Project Site; all local laws, regulations and conditions that may affect the use and development of the Project; and all other matters that may be material.

Respondents shall not rely upon any statement or information given to respondents by the State, ESD or ECHDC including, without limiting the foregoing, any information contained in this RFP or made available pursuant to this RFP, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, ECHDC may, in their sole discretion, invite any of the other respondents to participate in a further competitive process to determine a new selected respondent.

In addition to those terms and conditions stated elsewhere, this RFP is subject to the following:

- a. The preferred developer must comply with all applicable federal, state and local laws and regulations.
- b. The preferred developer must accept the Project Site in "as is, where is" condition on the date of disposition.
- c. Conveyance by ECHDC shall be governed by a Development Agreement.
- d. Demolition, removal, alteration or conversion of any existing improvement or portions thereof at the Project Site is to be performed at the sole cost and expense of ECHDC prior to closing under the Development Agreement.
- e. ECHDC will not pay for or refund any costs and expenses incurred by any respondent in responding to this RFP or subsequent selection stages or by any preferred developer following selection and/or designation.
- f. All determinations as to the completeness or compliance of any response/proposal or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of ECHDC.
- g. Selection or designation of any respondent pursuant to this RFP or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. ECHDC shall have no obligation or liability whatsoever to any person or entity whose response/proposal is selected or designated as a result of this RFP unless and until a Development Agreement shall have been fully executed and delivered by all parties thereto and all necessary consents and approvals necessary for ECHDC entry into such agreement have been obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Development Agreement.
- h. A respondent may be rejected if ECHDC determines, in their exercise of sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an "organized crime figure," under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with ECHDC, ESD, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by ECHDC, ESD and the State. ECHDC is under no legal obligation to dispose of the Project through a competitive bid process. This RFP does not constitute an offer of any nature and does not obligate ECHDC to undertake any action or to proceed with the Project.

- i. ECHDC will review all responses/proposals for completeness and compliance with the terms and conditions of this RFP, and may request from any and all of the developers, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response and/or proposal. ECHDC may also, but is not obligated, to make requests for additional material or for clarification or modification of any submitted response and/or proposal which is incomplete or non-conforming as submitted. Submission of a response and/or proposal shall constitute the respondent's permission to ECHDC to make such inquiries concerning the respondent and members of the respondent's team as ECHDC, in their sole discretion, deem useful or appropriate including, without limitation, authorization to contact the respondent's bank(s) and credit references, and any other persons identified in the proposal and to obtain pertinent financial and other information. Except at the request or by the consent of ECHDC, in their sole discretion, no respondent will be entitled to change its proposal once submitted.
- j. ECHDC may at any time exclude those proposals which, in their sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFP.
- k. ECHDC reserves the right, in their sole discretion, to reject at any time any or all proposals; to withdraw the request without notice; to negotiate with one or more developers submitting proposals and/or to negotiate with respect to, and dispose of the Project (including to parties other than those responding to this request) on terms other than those set forth herein. ECHDC reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process.
- l. Under no circumstances will ECHDC pay or be liable for any costs incurred by a firm/team in responding to this RFP or subsequent stage or in connection with the transfer of the Project Site.
- m. Responses and/or proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State, ESD, or ECHDC in connection with the selection of a respondent or the disposition of the Project Site. Submission of a statement of interest and/or proposal in response to this RFP or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the State, ESD and ECHDC from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such respondent's response to this RFP or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.
- n. Respondents of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without prior written approval from ECHDC. Any news release pertaining to this RFP may only be made in coordination with ECHDC.
- o. Public access to material submitted by respondents to this RFP or subsequent stage shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, ECHDC shall not be liable if ECHDC releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

- p. In the event that ECHDC becomes aware of any material misrepresentation in the information supplied by a developer, ECHDC shall have the right to reject at any time the response and/or proposal of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by ECHDC, in their sole discretion.
- q. The selection of a preferred developer will create no legal or equitable rights in favor of the selected developer, including rights of enforcement or reimbursement. A developer's response and/or proposal for the Project Site is not assignable and only the party identified as the developer/principal in the selected developer's submission will be permitted to execute the Development Agreement.
- r. By submitting a response and/or proposal for the Project, the developer agrees to be bound by all the terms and conditions of this RFP.

IX. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or

former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry. Per the website, Bidders are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

In addition, please see link to EO-192: <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

v. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

vi. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any

Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the

respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a MONTHLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix M).

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a

request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business

days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

vii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities,

services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

viii. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also, in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

ix. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

x. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the

applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xi. Insurance Requirements

The Designated Developer will be expected to show evidence of the following insurance requirements, as listed below:

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- B. Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- C. Excess Umbrella Liability insurance - \$10 million per occurrence / \$10 million aggregate minimum
- D. Professional Liability insurance - \$1 million minimum (preferably \$5 million)
- E. Worker's Compensation & Employer's Liability insurance at State statutory limits.
- F. Disability insurance coverage at State statutory limits.
- G. Builder's Risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles.

Erie Canal Harbor Development Corporation and the NYS Urban Development Corporation d/b/a Empire State Development, and the State of New York must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Umbrella Liability policies. All policies above should include a waiver of subrogation in favor of the additional insureds.

xii. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.